

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Investigation of)
)
HAWAIIAN ELECTRIC COMPANY, INC.)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
MAUI ELECTRIC COMPANY, LIMITED)
)
Related to the Major Power Outages of)
October 15-16, 2006.)
_____)

Docket No. 2006-0431

STIPULATION FOR PROTECTIVE ORDER NO. 23159

EXHIBIT A

AND

CERTIFICATE OF SERVICE

Filed Dec. 21, 2006

At 11 o'clock A.M.

Karon Higuchi
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Investigation of)
)
HAWAIIAN ELECTRIC COMPANY, INC.)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
MAUI ELECTRIC COMPANY, LIMITED)
)
Related to the Major Power Outages of)
October 15-16, 2006.)
_____)

Docket No. 2006-0431

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, on Sunday, October 15, 2006, the State of Hawaii experienced a 6.7-magnitude earthquake and aftershocks initiating a series of events that resulted in power outages on Oahu, Maui, and the island of Hawaii;

WHEREAS, on Thursday, October 19, 2006, Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO") and Maui Electric Company, Limited ("MECO"), collectively referred to herein as the "Companies", briefed the Public Utilities Commission of the State of Hawaii ("Commission") and the Division of Consumer Advocacy ("Consumer Advocate") on their initial assessment of the power outages and efforts at restoration;

WHEREAS, on Monday, October 23, 2006, the Companies held a public briefing presenting their preliminary findings regarding the power outages and restoration efforts, and responded to the questions and concerns of the public regarding the power outages and restoration efforts;

WHEREAS, at the public briefing and by letter dated October 23, 2006,

the Consumer Advocate requested that the Commission open an investigative docket to examine the power outages;

WHEREAS, by letter dated October 27, 2006, the Companies informed the Commission that they do not object to the opening of separate investigative dockets related to each company's respective power outages;

WHEREAS, by Order No. 22986, filed on October 27, 2006, the Commission initiated an investigative proceeding to examine the power outages of October 15-16, 2006, and designated the Companies and the Consumer Advocate as parties to the investigative docket;

WHEREAS, the Companies have committed to engaging industry experts to assist in the investigation of the power outages and restoration efforts on Oahu, Maui and the island of Hawaii;

WHEREAS, the Companies anticipate that they may file information contained in the industry experts' reports and other materials that the Companies consider to be privileged or confidential, which would include but not be limited to compliance reports and competitively sensitive or private customer information requested by the Commission, the Consumer Advocate or other permitted parties;

WHEREAS, the Companies maintain that certain confidential information and other materials that may be filed with the Commission could constitute "critical infrastructure information" subject to protection from disclosure under the Homeland Security Act of 2002 and the rules and guidelines promulgated pursuant thereto;

WHEREAS, the Companies maintain that certain system-related information should be considered confidential for security reasons, or that disclosure of

certain confidential information could disadvantage the Companies in their respective future negotiations with power suppliers, contractors, and/or vendors;

WHEREAS, the Companies also maintain that disclosure of certain confidential information contained in the aforementioned industry experts' reports and materials could disadvantage the Companies by allowing competitors of the Companies to analyze and utilize such information to their competitive advantage;

WHEREAS, the Companies are willing to disclose certain confidential information to the Consumer Advocate and the Commission, and either all or specific portions of the confidential information to other permitted parties, as appropriate, so long as the information is protected from further disclosure;

WHEREAS, the Companies and the Consumer Advocate desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which a party may in the future contend to be confidential;

WHEREAS, the Companies and the Consumer Advocate understand that for matters concerning the aforementioned industry expert reports or other materials, if it becomes necessary to address any information provided pursuant to this protective order during the course of any proceeding (e.g., formal hearing, briefing) before the Commission, that portion of the proceeding will be heard *in camera*; and

WHEREAS, the Companies and the Consumer Advocate understand and recognize that if any information is requested that is considered confidential by a vendor of the Companies, additional agreements and protection may be needed before the release of such information, under additional confidential protection, can be

accomplished;

WHEREAS, the Companies may also be requested to or on their own initiative choose to submit information that is related to the security of the each respective company's or the Companies' facilities, that if disclosed publicly, could increase risk to the company or Companies' facilities, jeopardize their emergency and disaster preparedness plans, and/or adversely impact their ability to respond to potential terrorist threats;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission issue a protective order covering the confidential information filed individually and/or collectively by the Companies, as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of confidential information produced by any party in this docket.
2. All parties to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, shall be subject to this protective order and shall be entitled to all confidential information of a party under the provisions of this protective order to the extent allowed by the Commission.
3. If the Commission designates a person as a qualified person pursuant to paragraph 13.g. below, that person shall comply with the provisions of this protective order, including executing a Protective Agreement.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

4. To the extent that any of the documents covered by this protective order consist of "government records," as defined in Hawaii Revised Statutes ("HRS") §92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control, unless otherwise required by law.

CLASSIFICATION

5. Any party may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, financial, vendor, bid, or nonpublic information, "critical infrastructure information" that should not be disclosed publicly under the Homeland Security Act of 2002, and/or information that is related to the security of the Companies' facilities, that if disclosed publicly, could increase risk to the Companies' facilities, jeopardize their emergency and disaster preparedness plans, and/or adversely impact their ability to respond to potential terrorist threats. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided in paragraph 14 below.

6. If a party designates information as confidential pursuant to paragraph 5 above or paragraph 7 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 12 through 15 below, and concurrently

provide certain information in writing to the Commission and the Consumer Advocate. If a party seeks to designate information as confidential, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the Commission or any party to this docket challenges the claim of confidentiality of the information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under a protective order. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 25 below.

7. Confidential information provided to the Commission or any party, orally or in any other form, shall be protected as fully as confidential information provided in written form. A party shall notify the Commission and the Consumer Advocate when information provided orally or in other than written form includes confidential information. At the time of such notification, the party shall, in the manner provided in paragraph 6 above, specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

8. All information claimed to be confidential information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as defined by this protective order) as constituting confidential information. Unless a

different treatment is warranted, any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect the underlying confidential information, shall also be subject to the terms of this protective order.

DESIGNATION

9. Any party claiming that information is confidential shall place upon all applicable material the following legend:

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

10. With respect to any confidential information that is not under the control of the party claiming confidentiality, other persons shall, to the extent requested by that party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 9 above.

11. Any party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, in the manner provided in paragraph 6 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or impermissible disclosure of the information. In addition, the party claiming confidentiality shall substitute the previously-produced but not designated as

confidential material with the identical material under designation as required in paragraph 9 above. The protections conferred herein shall apply to any confidential information voluntarily produced prior to the issuance of this protective order, provided that following the issuance of this protective order (1) the party, in the manner provided in paragraph 6 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information, and (2) the party claiming confidentiality ensures that the confidential information voluntarily produced prior to the issuance of this protective order contains the designation as required in paragraph 9 above.

DISCLOSURE

12. Except as provided in paragraph 14 below, confidential information shall not be made available or disclosed to any person who is not a "qualified person" as defined in paragraph 13 below.

13. "Qualified person," as used in this protective order, means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by the Commission for this proceeding;
- c. The Consumer Advocate, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate for this proceeding;

- d. The Companies, their officers and employees, their counsel (including employees directly employed by such counsel), and any consultants retained by the Companies for this proceeding;
- e. Any other party to this proceeding, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by it for this proceeding, to the extent allowed by the Commission;
- f. Any other person approved by the party asserting the claim of confidentiality; and
- g. Any other person designated as a qualified person by order of the Commission.

14. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from the party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the party claiming confidentiality, disclosure of the confidential information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 15 below.

PROCEDURE FOR OBTAINING ACCESS

15. Prior to disclosing confidential information to a qualified person other than the Commission and its staff, the qualified person shall read a copy of this protective

order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.

USE OF CONFIDENTIAL INFORMATION

16. Any confidential information obtained under this protective order shall be used solely in connection with this proceeding and any related administrative and judicial proceedings (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, except as provided in paragraphs 17 and 18, and except as may be directed by (a) an order of court, (b) an order of the Commission, or (c) the UIPA (in the case of any "agency" as defined in Haw. Rev. Stat. §92F-3), including any ruling of the Office of Information Practices.

17. Any confidential information obtained under this protective order may be used by the Commission and its staff in any proceeding pending before the Commission involving the producing party or their respective affiliates or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities with respect to the producing party or their respective affiliates. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in any

proceeding pending before the Commission involving the producing party or their respective affiliates, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities with respect to the producing party or their respective affiliates. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

19. Unless otherwise ordered by the Commission, if a party desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, the page(s) or portions of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left hand corner:

**Confidential Information
Deleted Pursuant To
Protective Order No. _____.**

RETENTION OF CONFIDENTIAL INFORMATION

20. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

21. Confidential information that is given to or filed with the Commission or its

staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

THIS ENVELOPE IS SEALED PURSUANT TO PROTECTIVE ORDER NO. ____ AND CONTAINS DOCUMENTS WITH ____ CONFIDENTIAL INFORMATION. IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS ENVELOPE DISPLAYED OR REVEALED EXCEPT TO QUALIFIED PERSONS AUTHORIZED TO INSPECT THE ENCLOSED DOCUMENTS.

22. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: **"Copying Prohibited."**

23. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a party or person has obtained under this protective order, that party or person, prior to disclosure, shall promptly notify the party claiming confidentiality of the request, subpoena, or order.

DURATION OF CONFIDENTIALITY

24. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested parties, by written stipulation, terminate the protection conferred by this protective order, or until further order of the Commission.

APPEAL TO THE COMMISSION

25. If any interested person disagrees with the designation of information as confidential, the party claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute

cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party claiming confidentiality shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this protective order.

NONWAIVER OF OBJECTIONS AND RIGHTS

26. The parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality.

27. The parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

MODIFICATION OF THE PROTECTIVE ORDER

28. The Commission may modify this protective order on the motion of any party, or on its own motion, or if modified by the Parties in writing and approved by the Commission.

DISPOSAL OF CONFIDENTIAL INFORMATION

29. Except as provided in paragraphs 30 and 31 below, within 90 days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the party producing the confidential information requests destruction, the person destroying

the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.


30. Counsel and the representatives of record for a party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding.


31. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate, and counsel for the Consumer Advocate for the duration required by applicable statutes, rules, administrative directives or orders of the Commission.

SANCTIONS

32. Any person violating this protective order shall be subject to sanctions imposed by the Commission.


DATED: Honolulu, Hawaii Dec. 8, 2006.


Craig I. Nakanishi, Esq.
Shah J. Bento, Esq.
Attorneys for
Hawaiian Electric Company, Inc.
Hawaii Electric Light Company, Inc.
Maui Electric Company, Limited


Jon S. Itomura, Esq.
Lane H. Tsuchiyama, Esq.
Attorneys for
Division of Consumer Advocacy
Department of Commerce and Consumer
Affairs

APPROVED AND SO ORDERED THIS DEC 21 2006.

PUBLIC UTILITIES COMMISSION OF THE
STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:



Ji Sook Kim
Commission Counsel

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of Protective Order No. _____, issued by the Public Utilities Commission in Docket No. 2006-0431 on the _____ day of _____, 2006 ("Protective Order").

2. I am employed, retained or assisting _____ in Docket No. 2006-0431, am a "Qualified Person" pursuant to Paragraph 13 of the Protective Order, and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ as provided for in paragraph 16 of the Protective Order (and paragraph 18 in the case of rendering assistance to the Consumer Advocate), and that I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person unless otherwise permitted by the Protective Order.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to _____, and I shall abide by the provisions in paragraph 29 of the Protective Order, unless otherwise permitted by

paragraphs 30 and 31 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order
and agree to abide by its terms and conditions.

DATED at _____.

Signature

Address

() _____
Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing
Protective Order No. 23159 upon the following parties, by causing a copy
hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
Executive Director
Division of Consumer Advocacy
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 326
Honolulu, HI 96813

DEAN MATSUURA
Director, Regulatory Affairs
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, HI 96840-0001

CRAIG I. NAKANISHI, ESQ.
Rush Moore LLP
737 Bishop Street, Suite 2400
Honolulu, HI 96813

Karen Higashida

DATED: DEC 21 2006